



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2010

Ms. Paula M. Rosales  
Assistant District Attorney  
Dallas County  
133 North Riverfront Boulevard, LB-19  
Dallas, Texas 75207-4399

OR2010-14644

Dear Ms. Rosales:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394632.

The Dallas County District Attorney's Office (the "district attorney") received a request for information related to four specified cause numbers, all involving the same named individual. You state you have no information responsive to a portion of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in part:

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the information at issue relates to an investigation of child abuse. We note the submitted information relates to an investigation of alleged online solicitation of a minor and possession of child pornography. However, the submitted information does not list a child or minor as the complainant. *See id.* § 101.003(a) (defining “child” or “minor” for purposes of Fam. Code ch. 261); Penal Code § 33.021(a)(1) (defining “minor” for purposes of Penal Code § 33.021). We find the district attorney has failed to demonstrate that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). We therefore conclude that the district attorney may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

You also seek to withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy.<sup>2</sup> Common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

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<sup>2</sup>Section 552.101 encompasses the doctrine of common-law privacy.

In Open Records Decision No. 393 (1983), this office concluded that, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy; however, because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld).

You argue that the requested information “relates to a sexual abuse of a child” and is therefore protected in its entirety by common-law privacy. However, the submitted information relates to an investigation of alleged online solicitation of a minor and possession of child pornography, not to a sexual assault. Thus, you have not demonstrated that the submitted information must be withheld in its entirety under section 552.101 in conjunction with common-law privacy. We find, however, that a portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. The district attorney must withhold this information, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how any of the remaining information is highly intimate or embarrassing and of no legitimate public concern. The district attorney may not withhold any of the remaining information under section 552.101 on that basis.

Section 552.101 also encompasses the doctrine of constitutional privacy. The constitutional right to privacy protects two types of interests. *See* Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. *Id.* The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is narrower than that under the common-law right to privacy; the material must concern the “most intimate aspects of human affairs.” *See id.* at 5 (citing *Ramie*, 765 F.2d at 492). You argue that portions of the submitted information are confidential under constitutional privacy. Upon review, we find you failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates any party’s privacy interests for purposes of constitutional privacy.

Accordingly, the district attorney may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

Section 552.101 also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Similarly, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we determine the district attorney must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 and federal law.

You claim that the remaining information is excepted from public disclosure under section 552.108(b)(1) of the Government Code. Section 552.108(b)(1) excepts from disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). Generally, a governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

This office has on numerous occasions concluded that section 552.108 excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.,* Open Records Decision Nos. 531 (1989) (holding that predecessor to section 552.108 excepts detailed guidelines regarding a police department's use of force policy), 508 (1988) (holding that release of dates of prison transfer could impair security), 413 (1984) (holding that predecessor to section 552.108 excepts sketch showing security measures for execution), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be

excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You contend that the remaining information reveals “a combination of specific law enforcement methods and strategies not commonly known to the public.” You assert that release of the remaining information “would interfere with on-going law enforcement and prosecution efforts in general.” However, you do not adequately explain how release of this information, pertaining to cases which resulted in convictions, would interfere with law enforcement. Consequently, we find you have failed to establish how public access to the information at issue would interfere with law enforcement; therefore, the district attorney may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code.

You claim that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 excepts from disclosure “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). Accordingly, the district attorney must withhold the information we have marked pursuant to section 552.130 of the Government Code.<sup>3</sup>

You next claim that some of the remaining information is excepted from disclosure under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147(a). The district attorney may withhold the social security number in the remaining information under section 552.147.<sup>4</sup>

In summary, we have marked the information that must be withheld (1) under section 552.101 of the Government Code in conjunction with common-law privacy, and (2) under section 552.130 of the Government Code. The district attorney may withhold the social security number in the remaining information under section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

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<sup>3</sup>We note that Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147.

Finally, you request that this office issue a "previous determination" that would permit the district attorney in the future to withhold from disclosure information related to the abuse of a child and any other information considered to be confidential by law without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 394632

Enc. Submitted documents

c: Requestor  
(w/o enclosures)